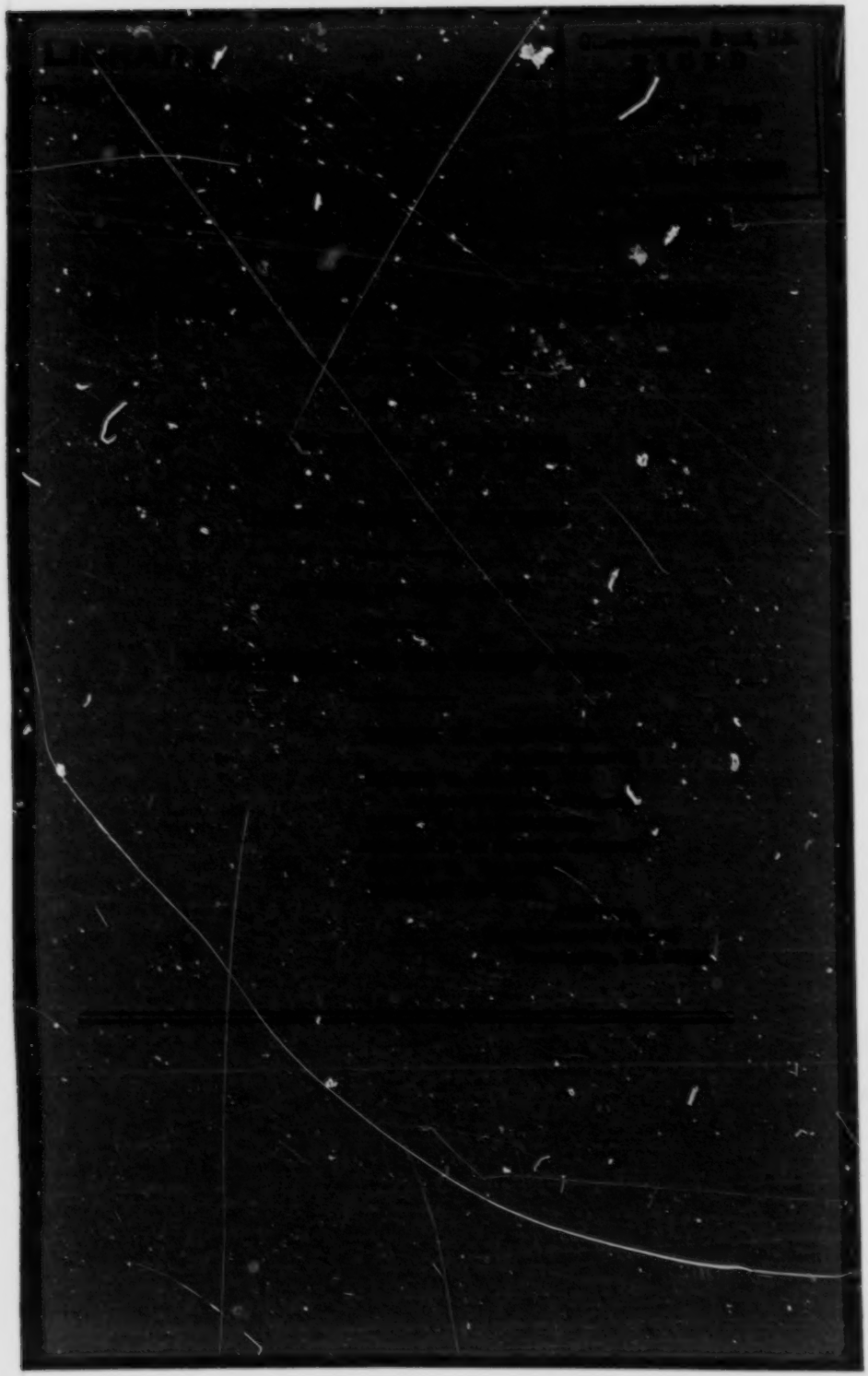

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In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 31, Original

STATE OF UTAH, PLAINTIFF

v.

UNITED STATES OF AMERICA

ON BILL OF COMPLAINT

MEMORANDUM FOR THE UNITED STATES

STATEMENT

Beginning in the 1850's, various portions of the public lands adjoining Great Salt Lake have been surveyed, with a meander line approximating the shore of the Lake as it then existed. Although the level of Great Salt Lake has fluctuated over the years, its general trend has been downward. As a result, the meander lines, drawn for the most part years ago, are in some cases thousands of feet, and in other cases several miles, inland of the present water line of Great Salt Lake. Ownership of these relicted lands, between the meander line and the water's edge, is the principal subject matter of this controversy.

The State of Utah claims all these lands as part of the original bed of Great Salt Lake, which it as-

serts is and was a navigable body of water, under the doctrine of *Pollard* v. *Hagan,* 3 How. 212. Private patentees from the United States who owns lots on the meander line claim the relicted acreage adjoining their lands under the common law doctrine of reliction. Invoking the same principle, the United States, as littoral owner, claims the balance of the relicted acreage—some 325,000 acres. See *State of Utah,* 70 I.D. 27 (1963). Moreover, wherever the water line was a substantial distance from the meander line at the time of the issuance of a patent, the United States claims the appurtenant relicted lands as the true littoral owner under the so-called *Basart* doctrine. See *Madison* v. *Basart,* 59 I.D. 415 (1957).

Attempts to settle by legislation this controversy between the State of Utah and the United States resulted in the passage of the Act of June 3, 1966 (80 Stat. 192). Section 1 of the Act directs the Secretary of the Interior to complete the public land survey around the Great Salt Lake by closing the meander line "following as accurately as possible the mean high water mark of the Great Salt Lake used in fixing the meander line on either side of the unsurveyed areas." Section 2 directs the Secretary to convey to the State of Utah "all right, title, and interest of the United States in lands * * * lying below the meander line of the Great Salt Lake * * *." Section 5 requires the State either to pay the fair market value of the lands conveyed to it, or to maintain an action in the Supreme Court "to secure a judicial determination of the right, title and interest of the United States in the lands conveyed to the State of Utah pursuant to section

2 * * *," the United States consenting to be joined as a defendant to such an action. The State has elected to initiate this action. See Laws of Utah, 1966, 2d Spec. Sess., ch. 11.

On March 1, 1967, the Attorney General of the State of Utah filed in the Supreme Court a Motion for Leave to File a Complaint, and a Complaint. The only defendant named in the complaint is the United States of America. On May 15, 1967, the Court granted the State of Utah's motion for Leave to File a Complaint (387 U.S. 902), and on June 12, 1967, appointed a Special Master (388 U.S. 902). On July 14, 1967, the United States filed an Answer to the State's complaint. In September 1967, Morton International, Inc., a Delaware corporation, filed a Motion for Leave to Intervene as a defendant in the matter, and an answer to the Complaint of the State of Utah, claiming certain lands below the meander line of Great Salt Lake which both the United States and Utah claim to own. On October 23, 1967, the Motion of Morton International Inc., for leave to intervene and file an answer was referred to the Special Master (389 U.S. 909). In November 1967, the United States responded that it had no objection to the intervention of Morton International, Inc., as a defendant in the action.

Certain questions relating to the intervention of Morton International, Inc., having been raised by the State of Utah and the Special Master, all counsel were requested by the Special Master to address themselves to the following issues:

1. Is an owner of land which is adjacent to and above the meander line of Great Salt Lake, who claims to own either on the basis of the doctrine of reliction, or because of the alleged nonnavigability of the Lake, land below the meander line of Great Salt Lake, an indispensible party to this action?

2. If the answer to the first question is in the affirmative, then, in those cases where such owners are citizens of the State of Utah, would their joinder to this action as parties defendant oust this Court of its jurisdiction over the matter?

The answer of the United States to the first question is, Yes, and to the second question, No.

ARGUMENT

I

AN OWNER OF LAND ADJACENT TO AND ABOVE THE MEANDER LINE OF GREAT SALT LAKE, WHO CLAIMS ON THE BASIS OF THE DOCTRINE OF RELICTION, OR OTHERWISE, TO OWN LAND BELOW THE MEANDER LINE OF GREAT SALT LAKE, IS AN INDISPENSABLE PARTY TO THIS ACTION

As indicated in the Statement, the United States, where it was the original littoral owner and has not conveyed its title, claims, under the doctrine of reliction, all the adjacent lands which have become uncovered by the recession of the water of the Lake. Yet, if the doctrine of reliction is applicable to this case, it inures to the benefit not only of the United States, but of all littoral owners similarly situated. Morton Salt advances such a claim and the records of the Department of the Interior disclose that there are over 100 other private property owners in the same

position. Thus, insofar as Utah here seeks to quiet its title to *all* of the relicted lands (Complaint, para. III), it is obvious that its claim cannot be adjudicated without the joinder of these private claimants, the only adverse parties with respect to some portion of the acreage in suit.

Nor is the State of Utah the only party claiming adversely to the claims of the private owners; the United States, also, asserts a claim against some of them. As already noted, those against whom this claim is asserted are persons whose land was not littoral at the time title passed from the government, because the meander line of the Lake as shown on the official plats of survey, to which their patents referred, was then many thousands of feet, and sometimes many miles, from the edge of the waters of the Lake. In these instances, the United States claims the benefit of the reliction as the true littoral owner under the *Basart* doctrine. As to those areas—estimated to comprise some 108,000 acres—the private landowners are therefore claiming adversely to both Utah and the United States and the title of neither sovereign can be quieted without adjudicating their rights.

The case being in this posture, it follows that any and all persons who claim title to any of the relicted lands along the shores of Great Salt Lake necessarily are indispensable parties to this action. Indeed, the private landowners are clearly "[p]ersons who not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final determina-

tion may be wholly inconsistent with equity and good conscience." *Shields et al.* v. *Barrow,* 17 How. 130, 139. See, also, *McShan* v. *Sherrill,* 283 F. 2d 462.

II

THE JOINDER TO THIS ACTION OF CITIZENS OF UTAH AS PARTIES DEFENDANT WOULD NOT DIVEST THE SUPREME COURT OF ITS JURISDICTION OVER THE CASE

In its present posture, this case is one initiated by the State of Utah against the United States as sole defendant. The United States having waived its sovereign immunity, no one contests that such an action is within the original jurisdiction of the Supreme Court. It is suggested, however, that the joinder of citizens of Utah as additional defendants would oust the Court's jurisdiction. We think not.

The question is ultimately ruled by the first two paragraphs of Section 2 of Article III of the Constitution, which provide as follows:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the

> Citizens thereof, and foreign States, Citizens or Subject.
>
> In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

Excerpting what seems relevant here, we find that "[t]he judicial Power shall extend * * * to Controversies to which the United States shall be a Party," and that in "all Cases * * * in which a State shall be Party, the supreme Court shall have original Jurisdiction." Reading "all cases" to mean "all cases before mentioned," we immediately reach the conclusion that the present action is within the Court's original jurisdiction.

It is not apparent how that jurisdiction can be defeated by the joinder of other parties. Certainly, Article III does not restrict federal jurisdiction premised on the presence of the United States as "a party" to the situation in which it is sole plaintiff or sole defendant. See, *e.g.*, 28 U.S.C. 1347. Nor does the Supreme Court's original jurisdiction of such an action depend upon the State's being the only party on the other side. See, *e.g.*, *United States* v. *West Virginia*, 295 U.S. 463, 470–471.

What, then, is the obstacle? Is there some overriding principle, albeit not expressed in Article III, that no federal court, or at least the Supreme Court,

can ever entertain a case, otherwise within its jurisdiction, because the contest is in part between a State and its own citizens? Plainly, the judicial power of the United States is not defeated on that account. To be sure, it has been settled since *Hans* v. *Louisiana,* 134 U.S. 1, that a citizen could not sue his State in the federal courts without its consent. But that is because of the principle of sovereign immunity, reflected in the Eleventh Amendment. Indeed, such a suit on a federal claim is within the jurisdiction of the United States courts if the State has consented. See *Parden* v. *Terminal R. Co.,* 377 U.S. 184, 186, and cases cited. And while a State rarely chooses the federal forum to sue her own citizens, the removal cases demonstrate that there is no bar to such an action in the United States courts if a federal question is presented. *E.g., Georgia* v. *Rachel,* 384 U.S. 780.

Plainly, the judicial power of the United States extends to a suit, otherwise within federal jurisdiction, in which a State and its citizens are opponents. Given that starting point, it would be difficult to rationalize a rule that absolutely prohibited the Supreme Court, unlike other courts, to entertain such an action originally, although the case was otherwise within its original jurisdiction. We submit no such rule prevails.

To be sure, it has been held that the Supreme Court cannot entertain an original action presenting only local law issues brought by a State against some of its own citizens and citizens of another State. See *California* v. *Southern Pacific Co.,* 157 U.S. 229, 257, 258, 261; *Minnesota* v. *Northern Securities Co.,* 184 U.S. 199, 246–247; *Louisiana* v. *Cummins,* 314 U.S. 577.

But that is presumably because such a case is beyond the jurisdiction of *any* federal court, on the view that the provision of Article III extending the judicial power of the United States to controversies "between a State and Citizens of another State," like the next clause, requires complete diversity. Cf. *Strawbridge* v. *Curtiss*, 3 Cranch 267.

There remains a troublesome *dictum* in *Southern Pacific, supra*, 157 U.S. at 261, and the uncritical alternative holdings in *New Mexico* v. *Lane*, 243 U.S. 52, 58, and *Texas* v. *Interstate Commerce Commission*, 258 U.S. 158, 163–165.

Southern Pacific was an original action brought by the State of California in the Supreme Court to establish its title to certain lands below the line of ordinary high tide of San Francisco Bay, claimed by the Southern Pacific Company under a grant from the City of Oakland. Having determined that the City of Oakland and the Oakland Water Front Company were indispensable parties to the litigation, the Court concluded it did not have original jurisdiction of the case because it was one between the State of California on the one hand and the citizen of another State and citizens of California on the other. Insofar as that holding merely reflects the "total diversity" principle to which we have previously adverted, the ruling is wholly irrelevant here. But, although it appears no federal question was presented, the Court went on to observe (*id.* at 261–262):

> * * * we are not called on to consider * * * whether any Federal question is involved, since the original jurisdiction of this court in cases

its consideration and approval prior to the commencement of further proceedings in this matter.

Respectfully submitted.

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